



BMW Group Purchasing Conditions for Non Production-Related Supplies within New Zealand

These Terms and Conditions shall apply to agreements (“**Agreements**”) between BMW New Zealand Ltd or those of its related bodies corporate (as defined in s2(3) of the Companies Act 1993) (collectively referred to as “**BMW**”), and the supplier (“**Supplier**”) in respect of the purchase of non production-related supplies (“**Goods and/or Services**”) within New Zealand unless agreed otherwise in writing. Any additional or different terms and conditions are herewith expressly excluded and shall not form part of the Agreement, and the Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of the Agreement.

1. Purchase Order

- 1.1 BMW shall issue a purchase order (“Purchase Order”) to the Supplier. Any performance by the Supplier of whatever nature in relation to the matters detailed in the Purchase Order will constitute acceptance of such Purchase Order and commencement of the Agreement.
- 1.2 In the event that the Supplier does not perform any act in relation to a Purchase Order, which would constitute acceptance of such Purchase Order within fifteen (15) working days after the Supplier’s receipt of the Purchase Order, BMW shall be entitled, but not obliged, to revoke such Purchase Order without incurring any liability to the Supplier.
- 1.3 The Supplier shall not appoint sub-contractors without BMW’s prior written consent.
- 1.4 In the event of any inconsistency between the terms of the Purchase Order and the terms of these Terms and Conditions, the terms of the Purchase Order shall take precedence to the extent of the inconsistency.

2. Amendments

- 2.1 BMW shall have the right at any time to amend or vary a Purchase Order in any respect including, but not limited to specifications, drawings, designs, construction, date and place of delivery, packaging, quality, quantity and means of shipment. The Supplier will evaluate the consequences of such change including, but not limited to, any increase or reduction in the cost to the Supplier or any delay of delivery, and shall inform BMW within 24 hours of such evaluation of such fact. The Supplier shall not action any amendment or variation until all consequences shall have been approved by BMW in writing.
- 2.2 The amendment of a Purchase Order will only be considered as binding, if the parties have concluded a supplementary written agreement regarding payment of the additional costs or the reimbursement of reduced costs together with an amended time schedule where applicable. Such agreement is to be concluded prior to the execution of the changes.
- 2.3 If such changes require further work or services of the Supplier that are not provided for in the Agreement, the Supplier shall be entitled to additional payment. The amount of additional payment shall be based on the prices for Goods and/or Services and the specific cost of the additional work to be carried out. The further work or services and the additional payment shall be documented in accordance with Section 2.2 above.

3. Delivery Dates / Delay / Force Majeure / Liquidated Damages

- 3.1 Delivery dates and quantities shall apply as set out in the Purchase Order. The Supplier acknowledges that delivery times and quantities are of the essence and BMW may reject and/or return at the Supplier’s expense any Goods and/or Services or part thereof received before or after the delivery date or in excess of the quantity specified in the Purchase Order.
- 3.2 The Supplier agrees to take all actions necessary and appropriate to ensure that Goods and/or Services are received by BMW as required under the Agreement. The Supplier will inform BMW promptly of any occurrence, which will or may result in any delay of delivery at any time or which will or may result in the Supplier’s inability to

supply the quantities specified in the Purchase Order. The Supplier shall also advise BMW in writing of corrective measures which the Supplier is taking to minimize the effect of such occurrence.

- 3.3 Except for excusable delay (“Excusable Delay”) as set forth in Section 3.4 below, in the event that the Supplier fails for any reason whatsoever to effect delivery consistent with the delivery dates specified in the Purchase Order, BMW shall be entitled to recover from the Supplier all actual, consequential and incidental losses and damages including, but not limited to, losses and damages relating to and arising out of incremental cost of labour, transportation, production changes and storage, and loss of profit.
- 3.4 Either party may suspend performance of the Agreement during the occurrence of an Excusable Delay, which shall mean any delay not occasioned by the fault or negligence of the delayed party and which results from (without limitation) Acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, fires, floods, typhoons, earthquakes, epidemics, unusual severe weather and delays of similar natural or governmental causes, or any other circumstances beyond such party’s reasonable control. Nothing contained in this Section 3.4 shall limit either party’s rights under the Agreement. Further, BMW shall be entitled to obtain the Goods and/or Services covered by the Agreement from other sources for the duration of the Supplier’s inability to perform due to Excusable Delay and to reduce without any obligation to the Supplier, the quantity of the Goods and/or Services specified in the Purchase Order.
- 3.5 In the event that the Supplier discovers any fact which may, or could with the passage of time, result in Excusable Delay, the Supplier will immediately advise BMW of such fact and use its best endeavours to take all measures and precautions to reduce the effect of the Excusable Delay. In addition, at any time, at BMW’s request, the Supplier will furnish to BMW such information as BMW may request concerning matters which could result in delays and assurances or contingency plans with respect to those matters. The Supplier will notify BMW immediately of any actual or potential labour dispute delaying or threatening to delay timely performance of the Agreement or a Call for Delivery and will include all relevant information.
- 3.6 If a sum of liquidated damages has been agreed upon for delay caused by the Supplier, BMW reserves the right to claim further damages subject to evidence.

4. Delivery / Passing of Risk

- 4.1 Unless otherwise agreed, the Supplier shall deliver the Goods duty paid to the stated place of destination (“DDP” in accordance with INCO-TERMS 2000).
- 4.2 Without prejudice to BMW’s rights to reject and/or return the Goods pursuant to these Terms and Conditions, title in the Good shall pass to BMW upon payment.
- 4.3 Notwithstanding Section 4.1, risk in the Goods shall remain with the Supplier until BMW’s express acceptance of the Goods.

- 4.4 In case of any defects concerning the delivered Goods and/or Services BMW will inform the Supplier immediately after their disclosure in the proper course of business.
- 4.5 Part deliveries are not permitted unless expressly agreed otherwise.
- 5. Acceptance**
- 5.1 If the Supplier is obliged to supply customised Goods and/or Services, a formal inspection and written acceptance from BMW is required. If inspection of the Supplier's performance requires commencement of operations or initial use for test purposes, the acceptance procedure shall take place upon successful completion of such test and written confirmation of the same by BMW.
- 5.2 Payments made by BMW shall not constitute acceptance or an acknowledgement that the Goods and/or Services have been provided satisfactorily.
- 6. Quality / Documentation**
- 6.1 The Supplier shall provide BMW with all documents, information and data that are deemed necessary to satisfy national and international official requirements.
- 6.2 If BMW demands initial or test samples, the Supplier may only commence production of the delivery item once written approval has been issued by BMW.
- 7. Payment / Assignment of Rights, Set-Off**
- 7.1 Unless agreed otherwise payment shall be effected only after performance and/or delivery in accordance with the terms of the Agreement and receipt of an auditable and verifiable invoice by BMW, which shall include the BMW Purchase Order Number, Supplier Number and GST number ("Auditable Invoice"). For the calculation of payment due dates, deliveries carried out prior to the agreed delivery dates shall be deemed to have been received on the agreed delivery dates.
- 7.2 If deposit payments are agreed upon, these shall only be made in return for a bank guarantee.
- 7.3 Payment shall be made 30 days after acceptance and receipt of an Auditable Invoice.
- 7.4 Payment shall be made by way of bank transfer or cheque.
- 7.5 The Supplier may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of BMW, which shall not be unreasonably withheld or delayed.
- 7.6 Whenever under the Agreement any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with BMW or any of its related companies. Exercise by BMW of its rights under this Section shall be without prejudice to any other rights or remedies available to BMW under this Agreement, or otherwise howsoever, at law or in equity. The Supplier shall have no such rights as set out above against BMW nor shall the Supplier exercise or claim to exercise a right of retention under this or any other agreement with BMW or its affiliated companies.
- 8. Warranty**
- 8.1 The Supplier hereby undertakes and warrants to BMW to supply the Goods and/or Services in an efficient and professional manner and that the Goods are free from material defects and are fit for purpose in conformity with the agreed specifications as detailed in the Purchase Order or as defined by BMW in writing for a period of two years unless stated otherwise in the Purchase Order.
- 8.2 The Supplier hereby undertakes and warrants to BMW to comply with the requirements of any statute, regulation or directive of any government department, local authority or other public or competent authority either in force at the commencement of the Agreement or coming into force during the Agreement ("Relevant Law") and with BMW's reasonable rules and policies notified to the Supplier from time to time.
- 8.3 The Supplier hereby undertakes and warrants to BMW to employ only competent, experienced, licensed if applicable and fully trained employees to supply the Goods and/or Services. The Supplier shall make available employment, qualification and training records of these employees upon BMW's request. The Supplier hereby undertakes and warrants to BMW to indemnify and hold harmless BMW from and against all actions claims and demands whatsoever against BMW and any losses, costs, damages, fines, judgments, liabilities and expenses (including reasonable professional fees) whatsoever incurred by BMW arising out of or incurred as a result of the employment by the Supplier or its sub-contractors of employees involved in the supply of Goods and/or Services.
- 8.4 A notice of defects by BMW shall suspend the warranty period for the defective part. Once the defect has been remedied, the warranty period commences anew.
- 8.5 The Supplier shall rectify at its own cost any defects as may be capable of remedy within one (1) week from notification of such defects by BMW.
- 9. Intellectual Property Rights**
- 9.1 All copyrights, industrial property rights and legal rights of a similar nature to the same related to the Goods and/or Services agreed and all other written, machine-readable or other work ("Intellectual Property Rights") resulting or arising from the performance of the Agreement shall be assigned to BMW without any further conditions and at no additional expense. BMW shall be exclusively entitled to such rights without any limits as to area, period or contents. In particular BMW shall be entitled to extend, assign, revise, adapt, modify, duplicate or publish such rights without the Supplier's consent. In addition, BMW shall be entitled to apply for a patent on patentable development results.
- 9.2 The Supplier warrants that it has the right to licence any third-party Intellectual Property Rights comprised in the Goods and/or Services provided to BMW and that BMW shall not be prevented from using the Goods and/or Services in accordance with the Agreement.
- 9.3 The Supplier shall indemnify BMW and its suppliers from and against all liabilities, costs, damages, claims and expenses (including legal expenses) that may be awarded or paid to any third party in respect of any claim or action that the Goods and/or Services or their use by BMW infringe the Intellectual Property Rights of such third party save to the extent that the Supplier has manufactured and/or provided the Goods and/or Services in accordance with instructions received from BMW, and the Supplier having taken all reasonable precautions could not have known that following these instructions would result in an infringement of a third party's Intellectual Property Right.
- 9.4 The parties will inform each other forthwith of all such infringements or suspected infringements of which they became aware. BMW will give the Supplier sole conduct of the defence of any such claims or actions.
- 9.5 Upon request of BMW, the Supplier shall specify any and all Intellectual Property Rights known or becoming known to him, which are used in the design or manufacture of, or which otherwise affect or relate to the Goods and/or Services.
- 9.6 The Supplier warrants that it will procure that all moral rights in works produced for BMW under this Agreement will be waived in favour of BMW in writing by such of its employees, sub-contractors or agents who supply the Goods and/or Services. The Supplier indemnifies BMW in relation to any loss, costs, damages or expenses that may be suffered or incurred by BMW as a result of a breach of this warranty.
- 10. Production Aids**
- 10.1 Production aids such as dies, templates, matrixes, models, samples, toolings, drawings, data and other information made available to the Supplier by BMW shall remain the property of BMW and are to be returned to BMW on request.

- 10.2 The production aids made available to the Supplier or manufactured on the basis of information gained from BMW may neither be duplicated nor sold, transferred by way of security, pledged nor otherwise passed on or used for third parties in any way without the express written consent of BMW. This also applies to the items manufactured with the help of these production aids.

11. Confidentiality / Advertising

- 11.1 The Supplier commits itself to treat as business secrets and to keep confidential all commercial and technical information, which comes to its knowledge during the course of the business relationship unless such information is or becomes public knowledge without the fault of the Supplier.
- 11.2 Drawings, models, patterns, samples and similar items or documents shall not be disclosed or otherwise made available to third parties without the prior written consent of BMW. Reproduction of such items is only permitted, if operationally required and in compliance with the applicable copyright laws.
- 11.3 The Supplier shall include obligations equivalent to Sections 11.1 and 11.2 in all agreements with sub-contractors and will ensure that all its employees are contractually obliged to comply with the same.
- 11.4 The Supplier may only advertise its business link with BMW or use BMW's name for any commercial purpose after obtaining the prior written consent of BMW.
- 11.5 The terms of this Section 11 shall survive the expiration or termination of the Agreement.

12. Termination

- 12.1 If the Agreement provides for the supply of Services, BMW may terminate the Agreement as a whole or in part at any time.
- 12.2 Either party and in case of Section 12.2.7 BMW may without prejudice to any other of its rights or remedies give written notice to the other party to terminate the Agreement forthwith, if:-
- 12.2.1 either party commits a material breach of the Agreement or persistently or repeatedly commits a breach of the Agreement or of any of these Terms and Conditions and fails to take action to remedy the same (if capable of remedy) to the reasonable satisfaction of the non-breaching party within thirty (30) days of receipt of a notice from that party, such notice specifying the breach complained of and the steps required to remedy the same; or
- 12.2.2 there is a meeting of creditors of either party or any arrangement or composition with or for the benefit of either party's creditors (including any voluntary arrangement for the purpose of reconstruction, amalgamation or similar reorganisation) is proposed or entered into by or in relation to either party; or
- 12.2.3 a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a provisional liquidator, a liquidator or similar officer takes possession of or is appointed to be responsible for the whole or any substantial part of the assets, operations or business of either party; or
- 12.2.4 either party ceases to carry on business or is unable to pay its debts as they become due;
- 12.2.5 any step is taken by a mortgagee to take possession or dispose of the whole or part of either party's assets, operations or business; or
- 12.2.6 a petition is presented or a meeting convened for the purpose of considering a resolution for the making of an administration order, the winding up, or dissolution of either party; or
- 12.2.7 the Supplier does not comply with the Relevant Laws.

- 12.3 BMW may terminate this agreement on written notice without liability where the Supplier is subject to a Change in Control. The Change in Control will be deemed to occur on the earlier of the announcement that it is to occur or the date it actually occurs. For the purposes of this Section, Change in Control means a situation where substantially all of the assets or the business of the Supplier are owned or controlled by a third party.

- 12.4 In the event that BMW terminates the Agreement due to the default of the Supplier or under this Section 12, payment shall be made only for completed Goods and/or Services supplied up to the date of termination in accordance with the terms of the Agreement, providing these Goods and/or Services are exploitable and utilisable by BMW. BMW's right to claim damages of any kind shall not be affected by the ability to utilize or exploit the Goods and/or Services.

- 12.5 Upon termination of the Agreement BMW shall not have any liability in respect of any employees of the Supplier or its approved sub-contractors and the Supplier agrees to indemnify BMW in respect of any loss suffered by it due to any claim made against it by any sub-contractor or the Supplier's or its sub-contractor's employees following termination of the Agreement.

- 12.6 The Supplier shall not be entitled to any further damages as a result of the termination.

- 12.7 Upon termination the Supplier shall assign all Intellectual Property Rights created prior to the termination in accordance with the Agreement to BMW as set out in Section 9.

- 12.8 Termination of the Agreement for whatever reason shall not affect the accrued rights of BMW arising in any way out of the Agreement as at the date of termination and in particular but without limitation to the right to recover damages against the Supplier, and all provisions which are expressed to survive the Agreement shall remain in full force and effect.

13. Indemnity / Insurance

- 13.1 The Supplier will indemnify and hold BMW, its agents, servants, officers, directors and employees, BMW's distributors, dealers and all entities which sell Goods and/or Services or products into which the Goods and/or Services are incorporated, and their respective customers, harmless against liability, costs, damages, losses, claims and expenses (including legal expenses) occasioned by or arising out of any claim for death, personal injury or property damage, which results from (a) any defect or alleged defect in the Goods and/or Services; (b) the Supplier's breach of any term of the Agreement; or (c) the fault or negligence of the Supplier.

- 13.2 In connection with the Goods and/or Services or otherwise, if the Supplier's employees, agents, sub-contractors or other representatives ("Supplier's Agents") are on or present at any premises of BMW, the Supplier shall be and is responsible for the acts and omissions of the Supplier's Agents within or about BMW's premises and agrees to indemnify and hold BMW harmless against liability for damage to property or injury or death to persons arising out of acts or omissions of the Supplier's Agents whether pursuant to the Agreement or otherwise. The indemnity in this Section shall not apply insofar as the claim is caused by the negligence or fraud of BMW.

- 13.3 In the event of a claim by a third party against BMW ("Third Party Claim"), which may be the subject of indemnification provided for in this Section 13 BMW shall provide written notification thereof to the Supplier. The Supplier shall provide BMW with such reasonable assistance in the response and prosecution of any defence as BMW may request.

- 13.4 The Supplier will procure and maintain during the term of this Agreement, the following insurances in respect of its provision of the Goods and/or Services:

- 13.4.1 workers' compensation insurance as required by law;

- 13.4.2 public liability insurance for an amount no less than NZ\$10 million; and
- 13.4.3 any other insurances reasonable required by BMW to protect the Supplier's liability under this Agreement.
- Such insurances will be procured from a reputable insurer, and the Supplier must upon request provide BMW with copies of the relevant policy or policies of insurance and evidence of payment of the current premium.
- 13.5 The provisions of this Section 13 shall survive the termination or expiry of the Agreement.
- 14. Data Protection**
- 14.1 The Supplier agrees and warrants that it shall fully comply and will ensure any of its employees, agents, subcontractors and service providers shall also comply with all statutes, regulations or Codes relating to the protection of data and/or personal information either in force at the commencement of this Agreement or that come into force during the Agreement, including but not limited to the Privacy Act 1993.
- 14.2 The Supplier shall not disclose any data and/or personal information without the prior written consent of BMW which shall be at BMW's sole discretion and will keep and use any data and/or personal information that it receives from BMW only for the purposes of performing this Agreement and providing the Goods and/or Services detailed in the Purchase Order and will return or destroy it in accordance with BMW's written instructions on the termination this Agreement.
- 14.3 The Supplier will provide at BMW's request all reasonable assistance that BMW may require to respond to an access or correction request or a complaint about a breach or apprehended breach of the Privacy Act. If the Supplier learns of an actual or suspected breach of the Privacy Act including a data security breach, it shall notify BMW as soon as reasonably possible and provide BMW with all assistance as BMW may reasonably request to investigate and resolve the breach.
- 15. General / Miscellaneous**
- 15.1 No amendment, modification, termination or waiver of any provision of these Terms and Conditions or of any Agreement, and no consent to any departure by either its parties, shall under any circumstances be effective unless the same shall be in writing and signed by both parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Supplier in any event, case or occurrence, shall of itself entitle the Supplier to any other or further notice or demand in any similar or other circumstances.
- 15.2 The headings of the various provisions of these Terms and Conditions are solely for convenience and shall not be used for the purposes of interpreting the same.
- 15.3 If any provision hereof or any part of any provision is or is held by any competent court or authority to be invalid or unenforceable, such provision or part of any provision will be deemed severed and omitted, the remaining portions hereof continuing in full force and effect. If required, BMW and the Supplier shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of the Terms and Conditions is not materially altered.
- 15.4 No course of dealings between the Supplier and BMW or any delay or omission of BMW to exercise any right or remedy granted under these Terms and Conditions or under the Agreement shall operate as a waiver of such rights, and every right and remedy of BMW provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 15.5 The Supplier agrees to permit BMW or its representatives to inspect all documents, instruments, books and records relating to any Agreement or the Goods and/or Services which are the subject of such Agreement during regular business hours upon forty-eight (48) hours notice. The Supplier agrees to maintain all such records for at least ten (10) years after the last delivery of the Goods and/or Services to BMW, unless otherwise agreed or unless a longer period is otherwise required by law.
- 15.6 Nothing in the Agreement or in these Terms and Conditions shall be deemed to constitute a partnership or joint venture between the parties nor to constitute any party the agent of the other party nor to constitute the relation between the Supplier or any of its staff to BMW of an employee to the employer.
- 15.7 Any proposal, acceptance, agreement, authority, permission or notice referred to in the Agreement or in these Terms and Conditions shall be in writing and shall be given if left at or sent by first class post or by telex or facsimile transmission (with confirmation copy by first class post).
- 16. GST**
- 16.1 In this Section 16, a word or expression defined in the Goods and Services Tax Act 1985 has the meaning given to it in that Act.
- 16.2 Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as "GST inclusive", does not include an amount on account of GST.
- 16.3 Despite any other provision in this Agreement, if a party ("Provider") makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST inclusive"):
- 16.3.1 the consideration payable or to be provided for that supply under this Agreement but for the application of this Section ("GST exclusive consideration") is increased by, and the recipient of the supply ("Recipient") must also pay to the Provider, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST ("GST Amount"); and
- 16.3.2 subject to Section 16.5 below, the GST Amount must be paid to the Provider by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 16.4 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense.
- 16.5 Despite Section 16.3.2 of this Agreement, the Recipient need not make any payment under Section 16.3.1 of this Agreement until the Provider has given the Recipient a tax invoice for the supply to which the payment relates.
- 17. Governing Law / Place of Venue and Jurisdiction**
- 17.1 The terms of the Agreement (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of New Zealand. The terms and conditions set out in the United Nations Convention for the International Sale of Goods ("CISG") and the Unidroit-Agreement dated 28 May, 1988 are hereby expressly excluded.
- 17.2 The parties agree that, save as to matters dealt with in Section 13, and save in relation to the enforcement of judgments, the prosecution of insolvency proceedings or the taking of injunctive relief, the courts of New Zealand shall have exclusive jurisdiction for any action or proceedings commenced under the Agreement.
- 17.3 For matters dealt with in Section 13, BMW may, at its discretion, choose to bring claims against the Supplier either at the place of BMW's principal place of business or in the venue in which the respective Third Party Claim is or has been pending.